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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Terry Lee Garrison,

10 Plaintiff,

11 v.

12 NaphCare Incorporated, et al.,

13 Defendants.
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No. CV-24-01407-PHX-SMM (MTM)

REPORT AND RECOMMENDATION

15 TO THE HONORABLE STEPHEN M. McNAMEE, SENIOR UNITED STATES
16 DISTRICT JUDGE:

17 Self-represented Plaintiff Terry Lee Garrison, who is confined in the Arizona State
18 Prison Complex-Lewis, filed a civil rights First Amended Complaint pursuant to 42 U.S.C.
19 § 1983. (Doc. 63.) On July 23, 2025, the Court issued an Order dismissing Count IV of the
20 Amended Complaint as well as Defendants Braithwaite, Racowsky, Humphries, and
21 Forehand from the entirety of this action. (Doc. 64.) The Court then directed the Clerk of
22 Court to send service packets to Plaintiff for Defendants Grace Adams, Siji Thomas, and
23 Rodney Stewart. (*Id.*) The Clerk of Court sent Plaintiff service packets as to these
24 Defendants that same day.

25 As set forth in the Court's previous screening Order (Doc. 7), Plaintiff was supposed
26 to complete and return the service packet to the Clerk of Court within 21 days of the date
27 of filing of its Order as the United States Marshal cannot provide service of process if
28 Plaintiff fails to comply with this directive. The record reflecting, however, that Plaintiff

1 failed to return the service packets as to any of the Defendants, the Court issued an Order
2 stating: “no later than 10 days from the date of this Order, Plaintiff must either return to
3 the Clerk completed service packets for Defendants, or show cause why this matter should
4 not be dismissed for failure to comply with the Court’s Order.” (Doc. 69.) To date, Plaintiff
5 has failed to respond to the Court’s Order and the time for doing so has expired. The Court,
6 therefore, will determine whether dismissal as to Defendants Grace Adams, Siji Thomas,
7 and Rodney Stewart is appropriate.

8 Plaintiff has the general duty to prosecute this case. *See Fidelity Philadelphia Trust*
9 *Co. v. Pioche Mines Consolidated, Inc.*, 587 F.2d 27, 29 (9th Cir. 1978). Rule 41(b) of the
10 Federal Rules of Civil Procedure provides that “[i]f the plaintiff fails to comply with these
11 rules or any order of court, a defendant may move to dismiss the action or any claim against
12 it.” *In Link v. Wabash Railroad Co.*, 370 U.S. 626, 629-31 (1962), the Supreme Court
13 recognized that a federal district court has the inherent power to dismiss a case sua sponte
14 for failure to prosecute. Moreover, in appropriate circumstances, the Court may dismiss a
15 complaint for failure to prosecute even without notice or hearing. *See id.* at 633.

16 In determining whether Plaintiff’s failure to prosecute warrants dismissal of the
17 case, the Court must weigh the following five factors: “(1) the public’s interest in
18 expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk
19 of prejudice to the defendants; (4) the public policy favoring disposition of cases on their
20 merits; and (5) the availability of less drastic sanctions.” *Carey v. King*, 856 F.2d 1439,
21 1440 (9th Cir. 1988) (quoting *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986)).
22 “The first two of these factors favor the imposition of sanctions in most cases, while the
23 fourth factor cuts against a default or dismissal sanction. Thus the key factors are prejudice
24 and availability of lesser sanctions.” *Wanderer v. Johnson*, 910 F.2d 652, 656 (9th Cir.
25 1990).

26 Here, the first, second, and third factors favor dismissal of this case as to Defendants
27 Adams, Thomas, and Stewart. Plaintiff’s failure to return service packets as ordered by the
28 Court prevents the case against these Defendants from moving forward in the foreseeable

1 future. The fourth factor, as always, weighs against dismissal. The fifth factor requires the
2 Court to consider whether a less drastic alternative is available. The Court has already
3 ordered Plaintiff to show cause why this matter should not be dismissed (Doc. 69), but
4 Plaintiff has not responded.

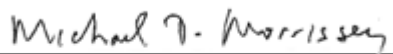
5 The Court finds that only one less drastic sanction is realistically available. Rule
6 41(b) provides that a dismissal for failure to prosecute operates as an adjudication upon the
7 merits “[u]nless the dismissal order states otherwise.” In the instant case, the Court finds
8 that a dismissal with prejudice would be unnecessarily harsh. Therefore, the Court will
9 recommend dismissal of this action without prejudice as to Defendants Adams, Thomas,
10 and Stewart pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.

11 Accordingly,

12 **IT IS RECOMMENDED** that Plaintiff’s Amended Complaint and this action be
13 dismissed without prejudice as to Defendants Grace Adams, Siji Thomas, and Rodney
14 Stewart pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.

15 This recommendation is not an order that is immediately appealable to the Ninth
16 Circuit Court of Appeals. Any notice of appeal pursuant to Federal Rules of Appellate
17 Procedure, Fed. R. App. P. 4(a)(1), should not be filed until entry of the district court’s
18 judgment. Pursuant to 28 U.S.C. § 636(b), any party may file and serve written objections
19 within 14 days after being served with a copy of this Report and Recommendation.
20 Pursuant to Rule 7.2(e)(3), Local Rules of Civil Procedure, objections to the Report and
21 Recommendation may not exceed ten (10) pages. If objections are not timely filed, the
22 party’s right to de novo review by the District Judge is waived. *See U.S. v. Reyna-Tapia*,
23 328 F.3d 1114, 1121 (9th Cir. 2003).

24 Dated this 20th day of October, 2025.

25 
26 Honorable Michael T. Morrissey
27 United States Magistrate Judge
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